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SUBJECT: DRC'S COURTS SLOW TO RESOLVE ELECTORAL DISPUTES

REF: A. 05 KINSHASA 1782

1B. KINSHASA 161

1C. KINSHASA 130

¶1. (SBU) Summary: More than 100 electoral disputes over seats in the DRC's National Assembly remain unresolved nearly seven months after the July 30 vote. The Supreme Court has been largely incapable of handling the large number of challenges filed, leading to a delay of more than three months in finalizing National Assembly results. Appellate courts hearing challenges to provincial and gubernatorial elections have likewise been slow to rule. The overburdened judicial system along with several challenges to the electoral process itself have left many important legislative posts vacant. End summary.

OVERWHELMING CASELOAD FOR SUPREME COURT

¶2. (U) A total of 372 challenges to the results of the July 30 legislative elections were filed with the DRC's Supreme Court. Figures provided by the DRC's Independent Electoral Commission (CEI) show that the majority of these cases -- 233 in total -- were dismissed on technical grounds. Another 123 are still being deliberated with decisions expected by the end of February, according to CEI officials.

¶3. (U) The remaining 16 challenges have produced three different outcomes. As reported ref A, elections in two districts -- Befale in Equateur province and Mweka in Western Kasai -- were annulled after the discovery of voter fraud and intimidation. The CEI has not yet organized re-votes because of continuing legal challenges to the Court decision. Another nine results were overturned after recounts, with candidates previously declared winners replaced by opponents. These reversals have not affected the overall balance of power in the National Assembly, but are being contested at the Supreme Court by the original winners. Finally, the vote tabulation for two elections were altered after a new vote count, but the final results remained the same.

¶4. (SBU) The Supreme Court has been slow in ruling on electoral disputes and has demonstrated limited proficiency in adjudicating such cases. The Court initially had a mid-November deadline to rule on National Assembly challenges, but had decided only 125 cases by that time (ref A). In the past three months, it has ruled on an additional 124 challenges, and now has 123 presumably to finish by the end of February. CEI judicial experts said the Court's justices are often overwhelmed by their caseload, have few resources at their disposal, and are not proficient or entirely competent in interpreting the country's electoral

law.

APPELLATE COURTS ALSO FLOODED WITH CHALLENGES

¶15. (U) The DRC's appellate courts are responsible for hearing challenges to provincial and gubernatorial elections. While their caseloads have not been as substantial as the Supreme Court's, 90 challenges to the October 29 provincial elections remain to be adjudicated. The courts received a total of 232 challenges to provincial elections and have dismissed 142. The remaining 90 are either under deliberation by the courts, or the courts have requested claimants to provide additional information before proceeding with their cases. A total of 13 challenges were brought to the gubernatorial elections, all of which have been decided.

¶16. (U) Appellate courts have also received 30 challenges regarding the selection of the 58 traditional chiefs ("chefs coutumiers") selected to the 11 provincial assemblies. Four cases remain under deliberation by the appellate courts in Kinshasa and Mbuji-Mayi, while the remaining 26 have been ruled upon. Nine challenges were declared admissible, three of which have been further appealed to the Supreme Court.

ONE DISPUTE AFFECTS BAS-CONGO GUBERNATORIAL RACE

¶17. (SBU) Of those challenges deemed admissible, the one in Bas-Congo has had an impact on the wider electoral process. Former presidential candidate and nominal Jean-Pierre Bemba

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ally Eugene Diomi challenged the credentials of one traditional chief who was given a seat in the provincial assembly, and claimed he (Diomi) was entitled to the seat. The Bas-Congo appellate court agreed that the basis on which the traditional chief was originally selected was flawed, and he was removed from the provincial assembly. The seat was still vacant when the assembly held gubernatorial elections in January, resulting in a 15-14 vote that has been challenged in court (ref B). It is likely that had Diomi been awarded the seat, the vote would have been tied, leading to a runoff election and avoiding the legal challenges currently underway. The Supreme Court's decision on an appeal of the Bas-Congo runoff is expected by February 15.

GUBERNATORIAL ELECTIONS IN KASAIS FINALLY SET

¶18. (U) Two other gubernatorial elections have not yet been held because of legal challenges. As reported ref C, two MLC candidates in Eastern and Western Kasai were alleged to have dual nationality, and their credentials were challenged by the CEI. Appellate courts in both provinces upheld the candidacies of Alex Kande and Dominique Kanku. The CEI appealed both rulings to the Supreme Court, which rejected them February 9. The CEI, which had originally postponed the Kasai gubernatorial elections to February 10, has now set them for February 15.

COMMENT: HIGHLIGHTING JUDICIAL WEAKNESS

¶19. (SBU) Delays in adjudicating electoral disputes highlight the weaknesses of the DRC's judicial system. Justices are faced with an often overwhelming caseload and do not have the skill, resources or expertise to rule quickly or correctly in many cases. The delays have resulted in an often heated political debate and delayed the work of a newly-elected government. Widespread perception that the courts are susceptible to political pressures further complicate the

picture. The courts have not performed well and will require significant reform to function effectively. End comment.
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